

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

PERDUE FARMS, INCORPORATED

SECTION A: Purpose

This is a special order by consent issued under the authority of Section 62.1-44.15(8a) of the Code of Virginia between the State Water Control Board and Perdue Farms, Incorporated to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code § § 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of the Department of Environmental Quality.
6. "Order" means this document, also known as a consent special order.
7. "Regulations" means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Perdue" means Perdue Farms, Incorporated.

9. "Permit" means VPDES Permit No. VA0003808.

SECTION C: Findings of Facts and Conclusions of Law

1. Perdue operates a poultry processing facility that is located on Route 13 in Accomac, Virginia. Perdue is subject to the Permit which was issued on February 27, 1996, reissued on April 9, 2001 and expires on April 9, 2006. The Permit allows the discharge of treated wastewater from Perdue's wastewater treatment plant (the "Plant") to Parker Creek, a tributary to Metomkin Bay and the Atlantic Ocean.
2. Section 62.1-44.5 of the Code, 25-31-50 of the Regulations, and II.L of the Permit prohibit discharges to State waters except in accordance with a VPDES permit. Part I of the Permit contains effluent limitations for ammonia, BOD, total suspended solids ("TSS"), and whole effluent toxicity with which Perdue is required to be in compliance. Section II.Q of the Permit requires Perdue to properly operate and maintain the Plant.
3. On June 13 and 14, 2002 the Plant's ultraviolet disinfection system experienced a mechanical failure at the same time that the back-up chlorination system was out of service. Due to operator error, approximately 1.1 million gallons of treated but not disinfected effluent was discharged to Parker Creek.
4. The Plant experienced an upset that started in mid June 2002 and lasted until mid July, 2002. The upset was due to Perdue's inability to maintain sufficient dissolved oxygen in the Plant's complete mix activated sludge system during a period of high ambient air temperatures. The Plant had four separate failures of aeration blowers and operated at reduced blower capacity for a total of 14 days.
5. The Plant experienced an upset in August and September of 2002 due to an outbreak of filamentous bacteria in the treatment works that was a result of Perdue's inability to maintain sufficient aeration in the Plant.
6. Perdue violated its Permit effluent limitations for ammonia on twelve occasions between July and October, 2002. Perdue violated its Permit effluent limitations for TSS twice in August, 2002 and twice in September, 2002. Perdue violated its Permit effluent limitation for whole effluent toxicity in February, August and December of 2002.
7. Inspections by DEQ and EPA have documented that the ultra violet light disinfection system is sized to treat 2.6 MGD of wastewater. The ultra violet disinfection unit regularly treats up to 3.0 MGD of wastewater. The control panel for the unit is subject to overheating and has to be operated with an opened door open which can cause electrical shorting if it rains.
8. Part I.C.10 of the Permit requires Perdue to maintain one foot of freeboard in the Plant's anaerobic lagoons. Perdue failed to maintain the required freeboard on October 8 and October 12, 2002.
9. The above referenced violations were cited in the following Notices of Violations: NOV No. W2002-09-T-0001, issued to Perdue on September 5, 2002; NOV No. W2002-10-T-0001, issued to Perdue on October 1, 2002; NOV No. W2002-10-T-0005, issued to Perdue on October 31, 2002; and, NOV No. W2002-12-T-0001, issued to

Perdue on December 20, 2002

10. Perdue is subject to a consent special order issued on June 13, 2001 by the State Water Control Board (the "June 2001 Order").

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code § 62.1-44.15(8a), orders Perdue, and Perdue agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Perdue, for good cause shown by Perdue, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Perdue by DEQ cited above. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Perdue admits the jurisdictional allegations, factual findings, and conclusions of law contained herein
4. Perdue consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Perdue declares it has received fair and due process under the Administrative Process Act, Va. Code §2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Perdue to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Perdue shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Perdue shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Perdue shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Perdue intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Perdue. Notwithstanding the foregoing, Perdue agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Perdue. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Perdue from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. This Order shall supersede the June 2001 Order.

13. By its signature below, Perdue voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003

Robert G. Burnley, Director
Department of Environmental Quality

Perdue voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _ day of
_____, 2003, by _____, who is
(name)

_____ of Perdue Farms, Incorporated, on behalf of the corporation.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

PERDUE FARMS, INCORPORATED

Perdue shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. By March 1, 2003 submit to DEQ, for review and approval, a comprehensive engineering report for the upgrade of the wastewater treatment plant that includes improvements to the following systems: pretreatment, aeration, activated sludge, solids handling and disinfection. Said improvements shall be designed to ensure compliance with the Permit effluent limitations.
3. By July 1, 2003, begin construction of the upgrades to the wastewater treatment plant in accordance with the approved engineering report.
4. By October 10, 2003, submit the first quarterly report on the upgrade of the wastewater treatment plant. Successive quarterly reports shall be due on the following dates: January 10, 2004; April 10, 2004; July 10, 2004; October 10, 2004; and, January 10, 2005.
5. By July 1, 2003, complete installation of a seventh centrifugal blower in the complete mix activated sludge system. Notify DEQ within 3 days of completion of installation.
6. By July 1, 2003, complete installation and begin operation of solids screening of effluent from the anaerobic lagoon. Notify DEQ within 3 days of completion of installation.
7. By January 1, 2005, complete construction of the upgrades to the wastewater treatment system in accordance with the approved engineering report.
8. By April 1, 2005, submit to the Tidewater Regional Office of DEQ, for its review and approval, a revised operations and maintenance manual for the upgraded wastewater treatment system. The revised manual is to identify all critical components of the system and to specify if a spare component is maintained at the facility or the procedure and time frame for obtaining a replacement component.
9. Conduct monthly chronic toxicity tests for six months, starting in January, 2005, using the procedures outlined in Part I.B of the Permit. Submit the test results to DEQ for review within

30 days of running the test.

10. In the event that any of the chronic test results (item #9) indicate the presence of toxicity, as defined by the Whole Effluent Toxicity limit of 1.724 Toxicity Units Chronic contained in the Permit, submit for DEQ's review and approval, within 90 days of Perdue's receipt of the test results, a toxicity reduction plan. Comply with the plan upon its approval by DEQ.